

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

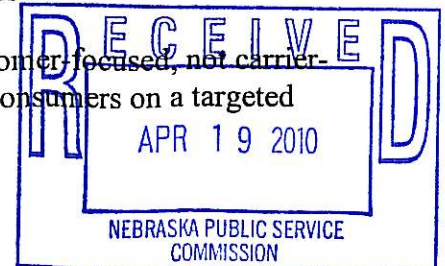
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| In the Matter of the Petition of |) | Application No. NUSF-77 |
| The Nebraska Telecommunications |) | |
| Association for Investigation |) | COMMENTS OF SPRINT |
| And Review of Processes and |) | NEXTEL |
| Procedures Regarding the NUSF. |) | |

Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners, collectively, "Sprint Nextel," hereby submits its comments pursuant to the Commission's Order Setting Procedural Schedule dated March 10, 2010 in the above-captioned matter.

Introduction

As set forth more fully below, Sprint Nextel's comments address the following points:

1. The Commission should decline to consider utilizing all or any portion of the existing NUSF as a broadband subsidy program, because the Commission lacks authority under both Nebraska and federal law.
2. Before considering any new broadband subsidy program, the Commission should take the logical first step of requiring all local exchange carriers to reduce their intrastate switched access rates to interstate levels in order to mitigate the harmful impact of high access rates on broadband deployment and adoption.
3. NUSF support should be eliminated in areas where unsubsidized carriers offer competitive services, because the presence of facilities-based wireline or wireless competitors should be sufficient to ensure that consumers will have access to reasonably priced service in the absence of subsidies.
4. NUSF support should reflect the reality of other available revenue sources for the incumbent local exchange carriers (ILECs). Because multiple services can be provided over the network, the ILECs can and should recover costs from their own customers through the provision of broadband and other services rather than burdening the customers of other providers.
5. Any new broadband subsidy program should be customer-focused, not carrier-focused, designed to stimulate demand and support consumers on a targeted



basis, and must not be funded solely through an assessment on voice telecommunications services revenues.

1. **The Commission Lacks Authority To Divert NUSF Distributions To ILECs For Broadband Deployment.**

The Commission lacks authority under Nebraska law to divert all or any portion of NUSF distributions to ILECs for the purpose of broadband deployment because broadband is unquestionably an information service. The FCC has consistently and repeatedly held that broadband internet access is an information service, regardless of the transmission method – including wireline DSL,¹ cable modem,² wireless,³ and broadband over power lines.⁴

Neb. Rev. Stat. §86-323, the declaration of policy statute, provides that it is the policy of the state to preserve and advance universal service based on principles including . . . “access to advanced *telecommunications and information services* should be provided in all regions of the state.”⁵ The declaration of policy statute distinctly refers to telecommunications and information services as separate services. More importantly, Neb. Rev. Stat. §86-324, the enabling statute for the NUSF, provides that “[t]he fund shall provide the assistance necessary to make universal access to *telecommunications services*

¹ *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, 20 FCC Rcd 14853, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, Sept. 23, 2005 (“Wireline Broadband Internet Access Services Order”).

² *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, 17 FCC Rcd 4798, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, March 15, 2002 (“Cable Modem Declaratory Ruling”).

³ *In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901, WT Docket No. 07-53, Declaratory Ruling, March 23, 2007 (“Wireless Broadband Declaratory Ruling”).

⁴ *In the Matter of United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, Nov. 7, 2006 (“BPL-enabled Internet Access Services Order”).

⁵ Neb. Rev. Stat. §86-323 (emphasis added).

available to all persons in the state. . . .”⁶ The NUSF enabling statute expressly limits the purpose of the NUSF to promote universal access to telecommunications services, and makes no mention of information services. This omission is significant, because the NUSF enabling statute directly follows the policy statute that clearly distinguishes telecommunications services and information services. If the legislature had intended for NUSF to be used to promote universal access to information services, it surely would have said so, as it clearly refers to both telecommunications services and information services in the immediately preceding statute. Instead, the statute explicitly and singularly includes access to telecommunications services, but not information services, in the stated purpose of the NUSF.

Likewise, Neb. Rev. Stat. §86-317 states that “[t]he purpose of the Nebraska Telecommunications Universal Service Fund Act is to authorize the commission to establish a funding mechanism which supplements federal universal service support mechanisms and ensures that all Nebraskans, without regard to their location, have comparable accessibility to *telecommunications services* at affordable prices.”⁷ The legislature clearly understood the difference between telecommunications services and information services, or it would not have specifically mentioned information services in the declaration of policy statute. Therefore, the most reasonable interpretation of the statutes is that the legislature did not intend for the NUSF to be used for the advancement of information services such as broadband internet access, and the Commission lacks authority under Nebraska law to divert NUSF funds to ILECs for this purpose.

⁶ Neb. Rev. Stat. §86-324 (emphasis added).

⁷ Neb. Rev. Stat. §86-317 (emphasis added).

Furthermore, the Commission lacks authority in this instance because the FCC has exclusive jurisdiction over broadband Internet access. The FCC first declared in its ISP-Bound Traffic Order that internet access traffic is an interstate service and thus is subject to the FCC's jurisdiction:

The Commission has held, and the Eighth Circuit has recently concurred, that traffic bound for information service providers (including Internet access traffic) often has an interstate component. (citation omitted) Indeed, that court observed that, although some traffic destined for information service providers (including ISPs) may be intrastate, the interstate and intrastate components cannot be reliably separated. (citation omitted) Thus, ISP traffic is properly classified as interstate, (citation omitted) and it falls under the Commission's section 201 jurisdiction.⁸

Likewise, the FCC's subsequent determinations that broadband Internet access is an information service also confirm that it is jurisdictionally interstate.⁹

As an interstate information service, broadband is within the exclusive purview of the FCC. The Commission lacks authority to impose an assessment on carriers' intrastate telecommunications service revenues and then use the assessment to provide funding for an interstate information service such as broadband. Accordingly, the Commission lacks authority under both Nebraska law and under applicable federal law to divert any portion of NUSF distributions to LECs to subsidize broadband deployment.

2. Reducing Inflated Switched Access Rates Is A Necessary Prerequisite To Advancing Broadband Deployment and Adoption.

Sprint Nextel maintains that the first step the Commission should take to advance broadband deployment and adoption is to reduce the inflated local exchange carrier switched access rates in Nebraska. Excessive intrastate switched access costs are inflating

⁸ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, CC Docket No. 99-68, Order on Remand and Report and Order, April 27, 2001, at ¶52.

⁹ *See, e.g.*, Cable Modem Declaratory Ruling at ¶59; BPL-Enabled Internet Access Services Order at ¶11; Wireless Broadband Declaratory Ruling at ¶28.

the prices of competitive retail offerings available in the market. Consumers are not receiving the best possible offerings in the market because high switched access rates, which were never designed to promote broadband, are now simply inflating the retail rates of alternative providers. Competing carriers cannot compete on an equal footing with ILECs if the ILECs are permitted to impose on their competitors input costs that are far above the actual cost of providing switched access functions. If switched access rates are reduced, as they should be, the market will provide consumers with better service offerings to compete with the incumbent providers.

Furthermore, excessive switched access rates are an impediment to the expansion of broadband deployment and adoption, as the FCC has expressly recognized in its recent National Broadband Plan:

Broadband providers have begun migrating to more efficient IP interconnection and compensation arrangements for the transport and termination of IP traffic. *Because providers' rates are above cost, the current system creates disincentives to migrate to all IP-based networks. . . . while this may be in the short-term interests of a carrier seeking to retain [intercarrier compensation] revenues, it actually hinders the transformation of America's networks to broadband.*¹⁰

As a result, among other things the FCC recommends intercarrier compensation reform that eventually eliminates per-minute charges.¹¹ To this end, the FCC recommends that “the first step of the staged reform should move carriers’ intrastate terminating switched access rates to interstate terminating switched access rate levels in equal increments over a period of two to four years.”¹²

Before even considering diverting any portion of the NUSF to the ILECs to subsidize broadband deployment, the Commission should take the logical first step and

¹⁰ Connecting America: The National Broadband Plan (“National Broadband Plan”), p. 142 (emphasis added).

¹¹ *Id.* at p. 148.

¹² *Id.*

require all local exchange carriers to reduce their intrastate switched access rates to interstate levels as the FCC recommends.

3. **NUSF Funding Should Cease In Areas Where Unsubsidized Competitors Offer Alternative Services.**

It is discriminatory, economically inefficient, and sends incorrect economic signals to consumers when subsidies are provided to ILEC services, in any instance where unsubsidized substitute services are available from other service providers. The presence of facilities-based wireline or wireless competitors should be sufficient to ensure that consumers will have access to reasonably priced service in the absence of subsidies to the ILEC. In the Commission's 2009 Annual Report to the Legislature, the Commission confirmed that local competition is extensive in Nebraska:

The Nebraska Public Service Commission implements key provisions of the 1996 Telecommunications Act (Act) that facilitate competition while maintaining quality and affordable service. Multiple factors contribute to increased consumer choice. First, competitive local exchange carriers (CLECs) create local competition. CLECs serve over 35 percent of the state's access lines, as compared to over 33 percent over the same period last year. Cable providers, primarily in the Omaha and Lincoln areas, serve nearly half of the market share attributed to CLECs. Second, wireless companies continue to increase their presence, now accounting for over 59 percent of the combined wireline and wireless market and they are forecasted to exceed 70 percent during 2009. The additional choice has not reduced access.¹³

In effect, an unsubsidized carrier that has built competitive facilities in a high cost area has bid "zero" in a hypothetical auction for NUSF support. It is this "zero" bid that should be used to determine the need for subsidy of the cost in serving those customers. And since the competitive carrier has invested its money in a sunk network, the honesty of the "zero" bid is validated. Under these circumstances, NUSF subsidization of any carrier is inappropriate. Accordingly, in areas where facilities-based wireline or wireless competitors are present, the Commission should remove NUSF support.

¹³ NPSC 2009 Annual Report on Telecommunications, p. 10.

4. NUSF Support Should Reflect Availability of Alternative Revenue Sources.

The Commission should recognize that multiple services are provided over the common network for which ILECs receive NUSF support. ILEC calling features, long distance service, broadband service and video entertainment services are all offered using common network components that are also used to provide basic local voice service. Given the enhanced revenue opportunities of modern networks, carriers can and should recover network costs from their own customers through the provision of broadband and other services instead of burdening other carriers and their customers through inflated switched access rates and NUSF surcharges. If ILECs are permitted to recover the entirety of their loop costs from the provision of narrowband voice service (including revenue from retail voice, inflated switched access, NUSF, FUSF), even though these loops provide, or could provide, additional end user services such as broadband internet access, this premise creates numerous irrational incentives that undermine the deployment and adoption of broadband service. For example, under this system, carriers have lower incentives to aggressively deploy and price broadband service because they risk having a customer to whom they provide broadband use a third party voice provider,¹⁴ thus eliminating voice-service related subsidy flows such as inflated access revenues.

Sprint Nextel suggests the Commission recognize that carriers today can and do use their networks to generate revenue from multiple retail services that were not prevalent when inflated switched access rates and the NUSF were established. The Commission can mitigate the resulting disincentives to broadband deployment and adoption by reducing

¹⁴ See, e.g., <http://www.magicjack.com/7/index.asp>, where MagicJack details how simple using broadband for telephone service is. It states, "1) Plug any household phone into magicjack. 2) Plug the magicjack into any USB port on your computer. 3) Pick up the phone and talk for free anywhere in the USA and Canada."

inflated switched access rates and reducing NUSF support to reflect that ILECs receive or can receive substantial revenues from these services that utilize the same network facilities as the voice services currently being supported.

Likewise, before any broadband subsidy is even considered, ILECs that wish to receive a subsidy should have the burden to prove that the subsidy is necessary in order to provide service in areas that are unserved today. And of those areas currently unserved, the Commission should consider how many are uneconomic to serve (i.e., unlikely ever to be served without financial assistance, taking into consideration all sources of retail revenue available on a modern network), as opposed to areas that are planned but not yet built out. The considerable length of time it takes to build out a network should be considered.

5. Any Broadband Subsidies Should Be Consumer, Not Carrier, Focused.

To the extent the Commission determines that broadband services can and should be subsidized in the future, the Commission should focus on creating a system that promotes competition and increases broadband adoption, rather than merely expanding the existing fundamentally flawed NUSF system. Sprint Nextel proposes that the Commission could stimulate broadband deployment and adoption by providing consumers with coupons for broadband services, similar to Sprint Nextel's Broadband User Coupon Kits ("BUCKs") proposal filed at the FCC.¹⁵ These coupons would make broadband hardware and services more affordable for low income groups and would allow consumers to direct state dollars to those carriers that are best able to meet their needs. Coupons could be

¹⁵ *In the Matter of National Cable and Telecommunications Association Petition for Rulemaking to Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There is Extensive Unsubsidized Facilities-Based Voice Competition*, WC Docket No. 05-337, GN Docket No. 09-51, RM-11584, Comments of Sprint Nextel Corporation, January 7, 2010.

provided based on income and other qualification criteria for discounts on the initial purchase of broadband hardware and the recurring charges for broadband services. This demand-side system would provide support to consumers on a targeted basis, encourage broadband service adoption, and promote broadband competition, instead of perpetuating a broken system of carrier-to-carrier, competitor-to-competitor transfers.

Furthermore, any new broadband subsidy program must not be funded solely through assessments on voice telecommunications services, as is the case today for Federal USF and NUSF. This is consistent with the FCC's observations in the National Broadband Plan:

Today, federal universal service funding comes from assessments on interstate and international end-user revenues from telecommunications services and interconnected VoIP services. Service providers typically pass the cost of these assessments on to their customers.

...

Service providers are increasingly offering packages that "bundle" voice and broadband and deliver them over the same infrastructure. Assessing only telecommunications services revenues provides incentives for companies to characterize their offerings as "information services" to reduce contributions to the fund.

There is an emerging consensus that the current contribution base should be broadened, though with differing views on how to proceed.¹⁶

As discussed above, the Commission lacks authority to impose an assessment on carriers' intrastate telecommunications service revenues that will be used to fund an interstate information service such as broadband. Even if the Commission had such authority, which it does not, placing the funding burden on voice service providers and their customers would be discriminatory and anti-competitive. Broadband funding should

¹⁶ National Broadband Plan at p. 149 (emphasis added).

not be based on a system of carrier-to-carrier transfers under which certain carriers (and their customers) subsidize other carriers, as is the case with the current NUSF.

Alternatively, a funding plan based on an assessment of the retail revenues associated with the provision of broadband services would match broadband subsidy and support in the same industry segment. This would cure the cross-industry funding problem inherent in taxing voice revenues in the name of supporting "high cost local voice" service but winking at the expenditure of these funds for ILEC broadband network upgrades that compete with investor-funded cable and wireless broadband. As discussed above, broadband Internet access is an interstate information service. Accordingly, the Commission lacks authority to expand the NUSF contribution base to include broadband revenues, as the Commission has no jurisdiction to assess an interstate service. Thus, any funding mechanism for a broadband subsidy program must be established by the Nebraska legislature, and should encompass a broad contribution base consistent with the public interest of all Nebraskans, and not place the funding burden on voice service providers, or their customers, to subsidize other carriers.

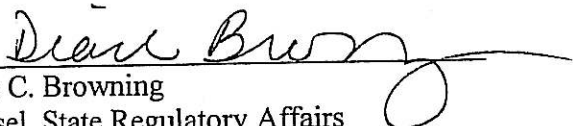
Conclusion.

The Commission must decline to consider utilizing all or any portion of the existing NUSF as a broadband subsidy program, because the Commission lacks authority under both Nebraska and federal law. Given the lack of authority to utilize the NUSF for this purpose, before considering any new broadband subsidy program, the Commission should use the jurisdictional authority it already clearly possesses and take the logical first step to promote broadband deployment and competition by requiring all local exchange carriers to reduce their intrastate switched access rates to interstate levels. NUSF support should be

eliminated in areas where unsubsidized carriers offer competitive services, because the presence of facilities-based wireline or wireless competitors should be sufficient to ensure that consumers will have access to reasonably priced service in the absence of subsidies to the ILEC. NUSF support can also be reduced by taking into consideration the reality of other available revenue sources for the ILECs that were not prevalent at the time the NUSF was established. Finally, any new broadband subsidy program should 1) be customer-focused, not carrier-focused; 2) promote competition by allowing consumers to choose the technology and provider to support; 3) be designed to stimulate broadband demand and adoption; 4) support consumers on a targeted basis; and 5) be funded over a broad contribution base consistent with the public interest of all Nebraskans and not solely through an assessment on voice telecommunications services.

Respectfully submitted this 19th day of April, 2010.

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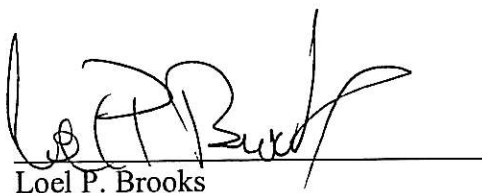
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of April, 2010, an original, six copies and an electronic copy of Sprint Nextel's Comments in Docket No. NUSF-77 were delivered to:

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